

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JAMES SCOTT VOROUS,

Plaintiff,

v.

WACHOVIA MORTGAGE, FSB,

Defendant.

No. CV-11-0320-EFS

**ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS, CANCELLING
LIS PENDENS, ENTERING JUDGMENT,
AND CLOSING FILE**

Before the Court, without oral argument, is Defendant Wachovia Mortgage's Motion to Dismiss, which seeks dismissal of Plaintiff James Scott Vorous' quiet-title complaint with prejudice under Federal Rule of Civil Procedure 12(b)(6) because it fails to state a claim upon which relief can be granted. ECF No. [5](#). Although granted an opportunity to file a response after the typical response deadline, Mr. Vorous failed to respond by the November 23, 2011 deadline. After reviewing the record and relevant authority, the Court grants Wachovia's motion for the reasons given below.

A. History

On August 16, 2011, Mr. Vorous filed an Original Petition for Quiet Title ("Complaint") in state court, seeking a ruling that Wachovia

1 Mortgage's¹ ("Wachovia") 2008-filed deed of trust in Spokane County
2 relating to real property that Mr. Vorous now has title to is void. ECF
3 No. [2](#)-1. Wachovia then removed the lawsuit to federal court on August
4 29, 2011. ECF No. [1](#). And on September 1, 2011, Wachovia filed the
5 instant motion to dismiss. ECF No. [5](#). Thereafter, on September 23,
6 2011, Mr. Vorous sought remand and also leave to file his opposition to
7 Wachovia's dismissal motion after the Court ruled on his remand motion.
8 ECF Nos. [9](#) & [10](#). On October 24, 2011, the Court denied Mr. Vorous'
9 Motion to Remand and granted Mr. Vorous an additional thirty days to
10 respond to Wachovia's dismissal motion. ECF No. [14](#). No filings
11 followed the Court's October 24, 2011 Order.

12 **B. Failure to Respond**

13 In the October 24, 2011 Order, the Court cautioned Mr. Vorous that
14 a failure to respond to Wachovia's dismissal motion can be considered by
15 the Court as consent to Wachovia's dismissal motion. ECF No. [14](#) at 2
16 (citing LR 7.1(e)). Mr. Vorous had also received this caution earlier
17 in the Notice to Pro Se Litigants of the Dismissal and/or Summary
18 Judgment Rule Requirements, ECF No. [8](#), on September 29, 2011.
19 Notwithstanding these two cautions, Mr. Vorous failed to file a response
20 to Wachovia's dismissal motion. Accordingly, the Court considers Mr.
21 Vorous' failure to respond as consent to Wachovia's dismissal motion.

22 **C. Merits of Wachovia's Motion**

23 Notwithstanding Mr. Vorous' consent to dismissal, the Court also
24 addresses Wachovia's dismissal motion. The Court finds the Complaint
25

26 ¹ Wachovia is division of Wells Fargo Bank, N.A.
ORDER * 2

1 fails to state a quiet-title claim and therefore grants Wachovia's
2 motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). The
3 December 2, 2010-recorded quitclaim deed from Edison Dorland to Mr.
4 Vorous did not extinguish Wachovia's February 5, 2008-recorded deed of
5 trust. This 2008 deed of trust secured a \$139,500 loan that Mr. Dorland
6 received from Wachovia. There is no allegation that this loan was
7 repaid, satisfying the deed of trust. Because the unsatisfied deed of
8 trust was recorded before the quitclaim deed was recorded, Wachovia's
9 lien interest in the real property is superior to Mr. Vorous' fee
10 interest in the same property. RCW 65.08.070; see *Seattle Mortg. Co.,*
11 *Inc. v. Unknown Heirs of Gray*, 133 Wn. App. 479, 495 (2006) (recognizing
12 the first-in-time recording is given priority). Therefore, based on the
13 alleged facts, Mr. Vorous is not entitled to quiet title. Because Mr.
14 Vorous' lawsuit is resolved, his August 16, 2011 recorded Lis Pendens,
15 ECF No. 2-1 p. 12, in Spokane County Superior Court is cancelled. RCW
16 4.28.325 (allowing the court to cancel a recorded lis pendens when the
17 real-property action is resolved).

18 **D. Conclusion**

19 Accordingly, **IT IS HEREBY ORDERED:**

- 20 1. Wachovia's Motion to Dismiss, **ECF No. 5**, is **GRANTED**.
- 21 2. The Complaint, **ECF No. 2-1**, is **DISMISSED with prejudice**.
- 22 3. **Judgment** is to be entered in Wachovia's favor with prejudice.
- 23 4. Mr. Vorous' August 16, 2011-dated Lis Pendens, which was
24 recorded on August 16, 2011, in Spokane County Superior Court is to be
25 **CANCELLED**.

1 5. All pending motions and hearings are **STRICKEN**.

2 6. This file shall be **CLOSED**.

3 **IT IS SO ORDERED.** The District Court Executive is directed to
4 enter this Order and provide copies to Mr. Vorous, counsel, and the
5 Spokane County Auditor's Office.

6 **DATED** this 5th day of December 2011.

7
8 s/ Edward F. Shea
9 EDWARD F. SHEA
UNITED STATES DISTRICT JUDGE

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